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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,858	12/04/2003	Timothy Graham Brockwell	FBD-1010USC	7915

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,858

Applicant(s)

BROCKWELL, TIMOTHY GRAHAM

Examiner

Robin A. Hylton

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9, 15 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-13, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 14 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on August 28, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,715,624 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Election/Restrictions

2. Claims 9,15, and 17 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 23, 2005.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1,2, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hargrove et al. (US 4,699,356).

Disclosed are a valve seat formed by seal member **23**, a first seal seen as the flange surface on the right-hand side of the figures, and a second seal **17,26** to seal against an inserted sampling tube **31**.

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To the degree no structure is set forth to define a vial, the fluid containing vessel disclosed as column 2, lines 27-29 is a vial.

5. Claims 12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Patzer (US 5,578,059).

Patzer teaches an elongated body member **20,18,17**, having first and second ends, an outward facing surface **34** of the first end forming a valve seat, a first seal comprising tapered surfaces **22**, a second seal comprising a septum **48**, and screw threads for joining to a vial **20**.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove in view of Guibert (US 2,844,964).

Hargrove discloses the claimed closure device except for the first seal comprising a sealing washer to be located between a vial and the closure flange.

Guibert teaches it is known to provide the first seal as a sealing washer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing washer to the closure device of Hargrove. Doing so provides a sealing member to a closure device which compensates for differences between the surfaces of the closure device and associated vial and/or to compensate for out-of-round surface contour surfaces of an associated vial opening.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove.

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Hargrove discloses the claimed closure device except for a tapered surface on the tubular body as the first seal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the seal as a tapered (friction-fit) surface since the examiner takes Official Notice of the equivalence of screw threads and a friction-fit surface for their use in the closure art and the selection of any of these known equivalents to secure a closure device to a vial would be within the level of ordinary skill in the art. Doing so provides an alternative securing arrangement for securing a closure device to a vial.

9. Claims 6-8, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove.

Hargrove discloses the claimed closure device except for a tapered surface on the tubular body as the first seal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the seal as a tapered (friction-fit) surface since the examiner takes Official Notice of the equivalence of screw threads and a friction-fit surface for their use in the closure art and the selection of any of these known equivalents to secure a closure device to a vial would be within the level of ordinary skill in the art. Doing so provides an alternative securing arrangement for securing a closure device to a vial.

To the degree no structure is set forth to define a vial, the fluid containing vessel disclosed as column 2, lines 27-29 is a vial.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patzer in view of Guibert.

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Patzer discloses the claimed closure device except for the first seal comprising a sealing washer to be located between a vial and the closure flange.

Guibert teaches it is known to provide the first seal as a sealing washer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a sealing washer to the closure device of Patzer. Doing so provides a sealing member to a closure device which compensates for differences between the surfaces of the closure device and associated vial and/or to compensate for out-of-round surface contour surfaces of an associated vial opening.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patzer.

Patzer discloses the claimed invention except for the body member being formed from metal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the body member of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides an alternate metallic body member for use with specific chemicals in an associated vial.

Allowable Subject Matter

12. Claims 14 and 16 are objected to as being dependent upon a rejected base claim, but appear to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments with respect to claims 1-8,10-14,16,18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. In view of the new grounds of rejection, this Office action is made non-final.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

17. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
November 6, 2006


Robin A. Hylton
Primary Examiner GAU 3781